



RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2004 JUN 24 A 11: 23

Federal Election Commission
Washington, DC 20463

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: June 21, 2004

On June 4, 2004, the ADR Office received from OGC/CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 175/AR 04-05, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 175/AR 04-05: An Audit of the 1999-2000 reports and records of the Democratic Party of Arkansas and Marcus Vaden, Treasurer ("Respondents") revealed that the committee accepted 194 filing fees from persons seeking non-federal offices, and deposited the fees into its federal account. Respondents did not deposit these questionable funds into a separate account; however, Audit staff indicated that Respondents consistently maintained sufficient funds in the federal accounts to transfer the filing fees to the non-federal accounts, except for the month of March 2000. The checks for these non-federal filing fees were drawn on personal accounts, raising the possibility that the personal accounts could have been reimbursed with impermissible funds. These funds did not pass through to the State, but were retained in one of Respondents' federal accounts and used for operating expenses. In addition, the filing fees were reported as contributions from "Individuals/Persons Other Than Political Committees." In response to the interim audit report, Respondents provided documentation demonstrating that individuals seeking non-federal offices who paid filing fees from their personal accounts were not reimbursed by their committees with prohibited monies for all but thirty-four

(34) of the filing fees in question. The total for the thirty-four questionable contributions was \$34,019.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 175, along with copies of the EPS II Rating and ADR Rating reports. The *ADR Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO's notification package sent to Respondents.

Recommendation: We recommend that ADR 175 (AR 04-05) be assigned to the ADR Office for processing.

ADR CASE ANALYSIS REPORT

ADR Case: 175

Audit Referral: 04-05

Date Audit Approved: 05/10/04

Date Forwarded to ADRO: 06/04/04

Date Reviewed by ADRO: 06/08/04

Respondents:

Democratic Party of Arkansas

Marcus Vaden, Treasurer

Respondent's' Rep.:

Marcus Vaden, Treasurer

Committee Type: State Party

Committee Name:

Democratic Party of Arkansas

District & State: Arkansas

Calendar Years: 1999-2000

Summary of Referral: An Audit of Respondents' 1999-2000 records revealed that Respondents accepted 194 filing fees from persons seeking non-federal offices, and deposited the fees into its federal account. The checks for these non-federal filing fees were drawn on personal accounts, with a possibility that the personal accounts could have been reimbursed with impermissible funds. These funds did not pass through to the State, but were retained in one of Respondents' federal accounts and used for operating expenses. In addition, the filing fees were reported as contributions from "Individuals/Persons Other Than Political Committees."

Alleged Violations: 2 U.S.C. §§ 434(b), 441b, 11 C.F.R. §§ 102.5, 104.3(a)

Respondents' Reply to Audit: Respondents provided documentation demonstrating that the filing fees do not contain monies prohibited under the FECA for all but thirty-four (34) of the filing fees in question, totaling \$34,019. Respondents transferred the \$34,019 to its non-federal account.

Issues:

- Prohibited contributions 2 U.S.C. § 441b.
- Deposit into separate federal account of only those funds subject to prohibitions and limitations of FECA 11 C.F.R. § 102.5.
- Funds for ballot access not contribution 11 C.F.R. § 100.7(b)(18) (2002).
- Reporting of all receipts 2 U.S.C. 434(b), 11 C.F.R. 104.3(a).

Analysis: Candidates and committees may not accept contributions from prohibited sources such as corporations, labor organizations, national banks, federal government contractors, or groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country. State laws in Arkansas do not prohibit contributions from these sources, so fees paid for non-federal office may use contributions from any source. Although Respondents did not deposit these questionable funds into a separate account, they did consistently maintain sufficient funds in the federal accounts to transfer the filing fees to the non-federal accounts, except for one month (March 2000). Respondents reported the funds as contributions from individuals or persons other than political committees. However, the regulations state payments made to any party committee by a candidate, or the authorized committee of a candidate, as a condition of ballot access are not contributions. 11 C.F.R. § 100.7(b)(18).

Related FEC Experience/Guidance: The statute and regulations are clear on the necessity of keeping funds subject to the FECA separate from those funds for which there are no prohibitions or limitations.

ADR Recommendation: Assign to ADRO